

Ashok Kumar Singh Vs. State of Jharkhand

Ashok Kumar Singh Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/68013

Court : Jharkhand

Decided On : Jan-14-2016

Appellant : Ashok Kumar Singh

Respondent : State of Jharkhand

Judgement :

1 Cr. Appeal (DB) No.130 of 2010 [Against the judgment of conviction dated 7th August, 2006 and order of sentence dated 8th August, 2006, passed by Sri Bhola Prasad, 2nd Additional Sessions Judge, Jamshedpur in Sessions Trial No.402 of 2004] ----- Ashok Kumar Singh. ...Appellant -Versus- The State of Jharkhand. Respondent. ----- For the Appellant : M/s. Lily Sahay, Advocate For the State : Mr. Tapas Roy, A.P.P. ----- PRESENT CORAM : HON'BLE MR. JUSTICE D. N. UPADHYAY HONBLE MR. JUSTICE RATNAKER BHENGRA ----- By Court:

1. This appeal has been directed against the judgment of conviction and order of sentence dated 7th August, 2006 and 8th August, 2006, respectively, passed by learned 2nd Additional Sessions Judge, Jamshedpur in connection with Sessions Trial No.402 of 2004, arising out of Sakchi P.S. Case No.56 of 2004, corresponding to G.R. No.578 of 2004, whereby the appellant has been held guilty for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, as it appears from the Fardbeyan of Shyamal Bhattacharjee-P.W.3, recorded on 11th April, 2004, at 12:15 hours, near Kanchan

Hotel, Ambagan, Sakchi, within Sakchi Police Station, East Singhbhum, in brief, is that on 11th April, 2004, at about 11:30 a.m. when the informant reached near a tea stall, he found a crowd assembled. To satisfy his curiosity he went there and found that his son-Debo Jyoti Bhattacharjee @ Bappa was lying dead, having injuries on his neck, abdomen, back etc. and blood was oozing from the wound. The people assembled at the place had apprehended the appellant-Ashok Kumar Singh with a knife in his hand. One hand of the appellant was also smeared with blood. In the meantime, the police patrolling party reached to the place and recorded Fardbeyan and lodged Sakchi P.S. Case No.56 of 2004 dated 11th April, 2004, 2 corresponding to G.R. No.578 of 2004, under Section 302 of the Indian Penal Code against the appellant. The Investigating Officer after due investigation submitted charge sheet against the appellant. Accordingly, cognizance was taken and the case was committed to the Court of Session and registered as Sessions Trial No.402 of 2004.

3. The charge under Section 302 of the Indian Penal Code against the appellant was framed and it was read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried. The prosecution, in order to substantiate the charge, examined altogether six witnesses, including the informant, investigating officer and the doctor. Learned Additional Sessions Judge at the conclusion, placing reliance on the evidences and documents available on record, held the appellant guilty for the offence punishable under Section 302 of the Indian Penal Code and sentenced him as indicated above. Hence this appeal.

4. The appellant has assailed the impugned judgment mainly on the ground that he was not arrested at the spot and he has committed no offence. The deceased was a man of criminal character, which is apparent from the evidence available on record. The conviction is recorded, placing reliance on solitary evidence of eye-witness-Rohan Rohit- P.W.1. He happens to be close friend of the deceased. The deceased was not accompanied by him and presence of this witness at the place of occurrence at the relevant point of time is highly doubtful for the reason that he did not intervene to save the deceased in any manner. He has stated that the deceased was assaulted by the appellant and his two associates, but what happened to those associates of appellant is completely silent and no investigation

has been done nor identity of those persons has been brought on record. P.W.1 has stated that the appellant was apprehended with the help of passersby and he has named them. Surprisingly enough, except P.W.1, no other witnesses, who alleged to have apprehended the 3 appellant, have come forward to support the prosecution case. The most notable laches appearing on the record is that according to the statement of P.Ws.1 and 3, the appellant was apprehended with knife, allegedly used for committing murder. No such knife was either seized or any explanation has been extended as to what happened to the knife, which the accused, according to prosecution witnesses, was holding in his hand at the time of his arrest. The manner in which P.W.1 has tried to prove his presence at the spot is also not very clear. In the circumstances, conviction cannot be sustained on the evidence of P.W.1, who is sole eye-witness to the occurrence. Evidence of such doubtful eye-witness needs some corroboration, which is lacking. P.W.2 happens to be a formal witness, in whose presence inquest report was prepared. The informant-P.W.3 is hearsay witness and he has reproduced the story narrated to him by P.W.1. The informant, who happens to be father of the deceased, has deposed that he had seen the appellant having knife in his hand and he was apprehended by the people assembled. Again it is submitted that no such knife has been brought on record by the prosecution. Subhra Bhattacharjee-P.W.4 happens to be mother of the deceased and she is also an hearsay witness. She has stated what was communicated to her by P.W.3. Lakhan Ram-P.W.5 is the Investigating Officer and he has proved the Fardbeyan, inquest report, seizure list etc. Dr. Akhilesh Kumar Choudhary-P.W.6 had conducted postmortem examination on dead body of Debo Jyoti Bhattacharjee and he has described the injuries, which he had noticed at the time of postmortem examination.

5. Learned counsel has again pointed out that numbers of injuries inflicted go to show that the occurrence must have continued for a longer period, but the prosecution witnesses are silent on this point. Again by referring to the statement of P.W.1, it is submitted that P.W.1 did not intervene to save his friend, though numbers of injuries 4 inflicted suggest that occurrence must have continued for some time. Thus, impugned judgment of conviction and order of sentence is not liable to be sustained and the appeal is liable to be allowed.

6. Learned A.P.P., appearing for the State, has opposed the argument and submitted that P.W.1 has supported the prosecution case and his statement should not be discarded only because he happens to be friend of the deceased. P.W.1 has clearly stated that the appellant was caught red handed at the spot by the people assembled. The police also arrived at the place and the appellant was handed over to the police. Fardbeyan of the informant was recorded at the place of occurrence. Inquest report was also prepared. The defence counsel has not taken any important material to discredit the testimony of P.W.1. Postmortem report proved by the doctor supports the ocular evidence, as disclosed by P.W.1. The Investigating Officer, who had conducted the instigation, has explained the investigation done by him. The accused-appellant was caught red handed at the place of occurrence. Therefore, instant appeal is liable to be dismissed.

7. We have examined the evidences and documents available on record. Off-course, the prosecution has made out a case that the appellant was caught red handed at the place of occurrence just after the incident. The evidence of P.W.1 needs to be scrutinized with great caution because he is the sole eye-witness and conviction has been recorded placing reliance on his deposition. No doubt, conviction can be recorded on the evidence of sole eye-witness, but it must be wholly reliable, convincing and inspiring confidence. The manner of occurrence, as disclosed by P.W.1, does not appear to be acceptable. He says that the appellant with his two associates had been causing injury to the deceased and the appellant was armed with a knife. Had it been so, he did not explain as to what happened to those two associates of the appellant. The conduct of P.W.1 appears to be doubtful. He happens to be friend of the deceased, but he did not intervene in any manner to save the life of the deceased. It is not a case of single blow. It reveals from the postmortem report that as many as 7-8 injuries by means of knife were inflicted and nature of injuries are incise wound and stab wound. It could well be observed that in causing such numbers of injuries the accused must have consumed some time. The place of occurrence is situated near a market where one hotel is also situated. The prosecution has brought on record that the appellant was apprehended at the spot with knife. Surprisingly enough, nobody tried to intervene to restrain the appellant or his associates from causing such numbers of injuries. What happened to that knife is unknown to the case record.

8. In view of the discussions made above and also considering the argument advanced by learned counsel for the appellant, we are not inclined to sustain the impugned judgment of conviction and order of sentence based on the testimony of sole eye-witness, who is not wholly reliable.

9. Considering all these aspects, benefit of doubt is given to the appellant-Ashok Kumar Singh. The impugned judgment of conviction and order of sentence dated 7th August, 2006 and 8th August, 2006, respectively, passed in connection with Sessions Trial No.402 of 2004, arising out of Sakchi P.S. Case No.56 of 2004, corresponding to G.R. No.578 of 2004 stands set aside. Accordingly, the appeal is allowed. The appellant, who is in custody in connection with Sessions Trial No.402 of 2004, is directed to be released forthwith, if not wanted in any other case and for that the convicting/successor court shall issue appropriate direction, if needed. (D. N. Upadhyay, J.) (Ratnaker Bhengra, J.) Jharkhand High Court, Ranchi, 14th January, 2016 Sanjay/NAFR 6

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com